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STORES CALIFORNIA, INC.; LONGS
10 DRUG STORES CORPORATION; LONGS
DRUG STORES CALIFORNIA, L.L.C.,
11 LONGS DRUG STORES, L.L.C., CVS
CAREMARK CORPORATION

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14

15 CHARLES JONES, individually, and
16 on behalf of other members of the
general public similarly situated,

17 Plaintiff,

18 v.

19 LONGS DRUG STORES
CALIFORNIA, INC., a California
20 corporation; LONGS DRUG STORES
CORPORATION, a Maryland
21 corporation; LONGS DRUG STORES
CALIFORNIA, L.L.C., a California
22 limited liability corporation; LONGS
DRUG STORES, L.L.C., a Maryland
23 limited liability corporation; CVS
CAREMARK CORPORATION, a
24 Delaware corporation;

25 Defendants.
26
27
28

Case No.: 08-cv-2156 W NLS

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OR
PARTIAL SUMMARY JUDGMENT**

Hearing Date: November 16, 2009
Time: 10:30 a.m.
Room: 7

**NO ORAL ARGUMENT PURSUANT
TO LOCAL RULE**

[Filed concurrently with Notice of
Motion and Motion, Memorandum of
Points and Authorities, Separate
Statement of Undisputed Material Facts,
Declarations of Sandy Reynoso and
Daniel J. McQueen, and [Proposed]
Order]

[Complaint Filed: November 21, 2008]
Trial Date: None Set

REQUEST FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201, Defendants Longs Drug Stores California, Inc., Longs Drug Stores Corporation, Longs Drug Stores California, L.L.C., Longs Drug Stores, L.L.C., and CVS Caremark Corporation hereby request that this Court take judicial notice of the following:

1. The July 27, 2004 Senate Bill Analysis for SB 1618. Legislative history is judicially noticeable. *See, e.g., Chaker v. Crogan*, 428 F.3d 1215, 1223 fn.8 (9th Cir. 2004) ("We grant Chaker's motion for judicial notice, in which he requests we take judicial notice of the legislative history of § 148.6....") A true and correct copy of this Senate Bill Analysis is attached to this request as Exhibit 1.

2. The September 5, 2008 Complaint in the Rubin v. Wal-Mart Stores, Inc., matter (N.D. Cal. Case No. CV08-4214 CW). Court documents filed in other matters are judicially noticeable. *See, e.g., Green v. Warden, U.S. Penitentiary*, 699 F.2d 364, 369 (7th Cir. 1983) ("federal courts may also take notice of proceedings in other courts, both within and outside of the federal judicial system...."); *see also Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002)

1 (court takes judicial notice of court documents filed in other litigation). A true and
2 correct copy of this Complaint is attached to this request as Exhibit 2.

3
4 Dated: October 15, 2009 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

5
6 By



DOUGLAS R. HART
JENNIFER B. ZARGAROF
DANIEL J. McQUEEN
JULIE WONG

Attorneys for Defendants LONGS DRUG
STORES CALIFORNIA, INC.; LONGS
DRUG STORES CORPORATION; LONGS
DRUG STORES CALIFORNIA, L.L.C.,
LONGS DRUG STORES, L.L.C., CVS
CAREMARK CORPORATION

EXHIBIT 1

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 445-6614 327-4478	SB 1618
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UNFINISHED BUSINESS

Bill No: SB 1618
Author: Battin (R)
Amended: 7/12/04
Vote: 21

SENATE LABOR & INDUST. RELATIONS COMMITTEE : 8-0, 4/14/04
AYES: Alarcon, Oller, Dunn, Figueroa, Kuehl, Margett,
McClintock, Romero

SENATE APPROPRIATIONS COMMITTEE : 7-0, 5/20/04
AYES: Alpert, Battin, Aanestad, Ashburn, Johnson,
Karnette, Poochigian
NO VOTE RECORDED: Bowen, Burton, Escutia, Machado, Murray,
Speier

SENATE FLOOR : 37-0, 5/26/04
AYES: Aanestad, Ackerman, Alarcon, Alpert, Ashburn,
Battin, Bowen, Brulte, Burton, Chesbro, Denham, Ducheny,
Dunn, Escutia, Figueroa, Florez, Hollingsworth, Johnson,
Karnette, Kuehl, Machado, Margett, McClintock, McPherson,
Morrow, Murray, Oller, Ortiz, Perata, Poochigian, Romero,
Scott, Soto, Speier, Torlakson, Vasconcellos, Vincent
NO VOTE RECORDED: Cedillo, Sher, Vacancy

ASSEMBLY FLOOR : Not available

SUBJECT : Employee compensation

SOURCE : Author

DIGEST : This bill requires employers, by January 1,
CONTINUED

2008, to only provide the last four digits or less of an employees social security number (SSN) along with the employees name and other required information on the itemized statement furnished at the time of each payment of wages to an employee. This bill allows an employee identification number to be used in lieu of a SSN on the itemized statement.

Assembly Amendments provide that the bill's requirement shall commence January 1, 2008.

ANALYSIS : Existing law provides that every employer must furnish each employee with an itemized statement at the time of each payment of wages that shows among other things, the name and SSN of the employee. A knowing and intentional violation of this provision is a misdemeanor.

Existing law exempts the state or a city, county, city and county, district, or other governmental entity from these provisions.

This bill requires that instead of the employee's entire SSN, by January 1, 2008, only its last four digits or less will be shown on the itemized statement. It also allows an employee identification number to be used in lieu of the SSN on the itemized statement.

This bill clarifies that its provisions do not apply to any state, any city, county, city and county, district, or any other governmental entity unless they furnish the employees with a check, draft or voucher paying the employee's wages.

In that case, they shall use no more than the last four digits of the SSN or shall use an existing employee identification number on that check, draft or voucher.

NOTE: California is the only state that requires the SSN to be displayed on employee payroll statements.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

<u>2006-07</u>	<u>Fund</u>
Enforcement General/Local	Minor, if any, costs
Penalties General/Local	Minor, if any, costs

The State Controller already complies with the provisions of this bill and thus incurs no additional cost.

SUPPORT : (Verified 7/12/04)

American Payroll Association
California Manufacturers and Technology Association
California School Employees Association
Kaiser Permanente
Service Employees International Union

ARGUMENTS IN SUPPORT : Proponents argue that this bill addresses growing concerns about identity theft. It offers needed protection to employees and will help stem identity theft crimes. Proponents state that unauthorized use of SSNs is the most common way criminals are committing identity theft. Should an individual's name and SSN get into the wrong hands, vital information could be pasted together to allow a criminal to access an individual's personal and often financial information. This bill limits employers to use only the last four digits or less of an employee's SSN or an employee identification number to verify proper distribution without revealing undisclosed information.

NC:mel 7/27/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

EXHIBIT 2

SEP-05-2008 13:05 FROM: HARRIS AND RUBLE 3239313366 Filed 09/05/08 Page 1 of 16

P.2

ORIGINAL

FILE BY FAX

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 2 David Zelenski (SBN 231768)
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E-filing

FILED

SEP 5 2008

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

11 BENNETT RUBIN, individually
 12 and on behalf of all others similarly
 13 situated,

14 Plaintiffs,

15 v.

16 WAL-MART STORES, INC. a
 17 Delaware corporation, and DOE
 18 ONE through and including DOE
 19 TEN,

20 Defendants.

CV Case 08

4214

CW

COMPLAINT

[Class-Action Complaint]

1. 29 U.S.C. § 216
2. Cal. Lab. Code § 203
3. Cal. Lab. Code § 226
4. Cal. Bus. & Prof. Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

21 COMES NOW Plaintiff, and for his causes of action against Defendants, alleges
 22 as follows:

JURISDICTION AND VENUE

23 1. This Court has original jurisdiction over this action pursuant to the Fair
 24 Labor Standards Act, 29 U.S.C. §§ 201 through 219 in general, and §§ 207(a)(1) and
 25 216(b) in particular. The Court also has supplemental jurisdiction over Plaintiff's state-
 26 law claims pursuant to 28 U.S.C. § 1367.

27 2. Venue is proper in the Northern District of California because Defendant
 28 WAL-MART STORES, INC. is subject to personal jurisdiction in that District.

1 **PARTIES**

2 3. Plaintiff BENNETT RUBIN ("Plaintiff") is an individual who, during the
3 time periods relevant to this Complaint, was employed by Defendant WAL-MART
4 STORES, INC. in Panorama City, California.

5 4. Defendant WAL-MART STORES, INC. ("Wal-Mart" or "Defendant") is a
6 Delaware corporation, doing business in the State of California, with principal offices in
7 the State of Arkansas. Wal-Mart operates more than 200 Wal-Mart and Sam's Club
8 stores in California, and each store employs hundreds of non-exempt hourly workers.
9 Over the past five years, Wal-Mart has employed at any given time approximately
10 61,000 workers in California. It is the largest private employer in the United States.

11 5. Plaintiff is unaware of the true names, identities, and capacities, whether
12 individual, corporate, or otherwise, of Defendants DOE ONE through and including
13 DOE TEN, but leave of Court will be prayed to amend this Complaint to insert the same
14 herein when finally ascertained. Plaintiff is informed, believes, and thereon alleges that
15 each fictitiously named Defendant is legally responsible for the acts, omissions, and
16 damages hereinafter alleged.

17 **GENERAL ALLEGATIONS**

18 6. Plaintiff brings this action to recover damages and monies due for all
19 similarly situated current and former employees of Wal-Mart for Wal-Mart's failure to
20 pay all overtime compensation owing to them and for Wal-Mart's failure to timely pay
21 all wages due discharged and/or quitting employees.

22 7. The Fair Labor Standards Act ("FLSA") states:

23 [N]o employer shall employ any of his employees who in any workweek
24 is engaged in commerce or in the production of goods for commerce, or is
25 employed in an enterprise engaged in commerce or in the production of
26 goods for commerce, for a workweek longer than forty hours unless such
27 employee receives compensation for his employment in excess of the hours
28 above specified at a rate not less than one and one-half times the regular rate

1 at which he is employed.

2 29 U.S.C. § 207(a)(1). The FLSA defines "regular rate": "As used in this section the
3 'regular rate' at which an employee is employed shall be deemed to include *all*
4 remuneration for employment paid to, or on behalf of, the employee." Id. § 207(e)
5 (emphasis supplied).

6 8. Plaintiff was employed by Wal-Mart as an hourly, non-exempt employee
7 from approximately May 2, 1998, to approximately September 19, 2006. True and
8 correct copies of some of his Wal-Mart pay stubs are attached hereto as Exhibit 1. As
9 reflected on those pay stubs, Wal-Mart would pay its California employees an extra hour
10 of wages for each meal period that it failed to provide. See section 226.7 of the
11 California Labor Code, which section states that, "[i]f an employer fails to provide an
12 employee a meal period or rest period . . . , the employer shall pay the employee one
13 additional hour of pay at the employee's regular rate of compensation for each work day
14 that the meal or rest period is not provided." Cal. Lab. Code § 226.7(b). According to
15 the California Supreme Court, the extra hour of compensation owing on account of
16 foregone meal periods is a wage. Murphy v. Kenneth Cole Prods., Inc., 40 Cal. 4th
17 1094, 1114 ("[T]he 'additional hour of pay' is a premium wage intended to compensate
18 employees.").

19 9. As reflected on Plaintiff's pay stubs, for example, Plaintiff received an extra
20 hour of wages for a foregone meal break during the pay period ending September 1,
21 2006. In addition, Plaintiff received overtime compensation during that pay period.
22 However, Wal-Mart calculated Plaintiff's overtime rate of pay without including the
23 extra hour of compensation he received on account of the missed meal period. In other
24 words, Plaintiff, as well as all other non-exempt Wal-Mart employees who earned
25 overtime wages and meal-premium wages during the same pay period, have not received
26 all wages due and owing.

27 10. Again, on approximately September 19, 2006, Plaintiff quit his employment
28

1 with Wal-Mart. He received his final paycheck on September 28, 2008, which was the
2 next regularly scheduled payday. However, that paycheck did not include his accrued
3 vacation pay. In addition, although Plaintiff has since been paid his accrued vacation
4 pay—he was paid by way of separate check approximately one week later—his final
5 paycheck did not include all of the overtime wages due him on account of Wal-Mart's
6 miscalculation of his regular rate of pay.

7 11. Section 201 of the California Labor Code provides that "[i]f an employer
8 discharges an employee, the wages earned and unpaid at the time of discharge are due
9 and payable immediately." Cal. Lab. Code § 201(a). Likewise, section 202 of the
10 California Labor Code provides that, "[i]f an employee not having a written contract for
11 a definite period quits his or her employment, his or her wages shall become due and
12 payable not later than 72 hours thereafter." *Id.* § 202(a). Because Wal-Mart did not pay
13 Plaintiff all overtime wages due him, Wal-Mart has violated section 202 of the California
14 Labor Code. In addition, all other non-exempt Wal-Mart employees who earned
15 overtime wages and meal-premium wages during the same pay period and who either
16 quit their employment with Wal-Mart or were discharged by Wal-Mart have likewise not
17 been paid all wages due and owing. Wal-Mart also systematically fails to make timely
18 payment of unpaid vacation pay to discharged and quitting employees.

19 12. In addition to failing to pay the appropriate amount of overtime to
20 employees and failing to timely pay former employees, Wal-Mart provides its employees
21 with pay stubs that do not contain all of the information required by the California Labor
22 Code. Section 226 of the California Labor Code provides:

23 Every employer shall, semimonthly or at the time of each payment of wages,
24 furnish each of his or her employees, either as a detachable part of the
25 check, draft, or voucher paying the employee's wages, or separately when
26 wages are paid by personal check or cash, an itemized statement in writing
27 showing (1) gross wages earned, (2) total hours worked by the employee,
28

1 except for any employee whose compensation is solely based on a salary
2 and who is exempt from payment of overtime under subdivision (a) of
3 Section 515 or any applicable order of the Industrial Welfare Commission,
4 (3) the number of piece-rate units earned and any applicable piece rate if the
5 employee is paid on a piece-rate basis, (4) all deductions, provided, that all
6 deductions made on written orders of the employee may be aggregated and
7 shown as one item, (5) net wages earned, (6) the inclusive dates of the
8 period for which the employee is paid, (7) the name of the employee and his
9 or her social security number, (8) the name and address of the legal entity
10 that is the employer, and (9) all applicable hourly rates in effect during the
11 pay period and the corresponding number of hours worked at each hourly
12 rate by the employee. The deductions made from payments of wages shall
13 be recorded in ink or other indelible form, properly dated, showing the
14 month, day, and year, and a copy of the statement or a record of the
15 deductions shall be kept on file by the employer for at least three years at
16 the place of employment or at a central location within the State of
17 California.

18 Id. § 226(a). First, the pay stubs misstate the correct overtime rate of pay on account of
19 the meal-premium wage described above. Second, the pay stubs do not list the total
20 hours worked by employees.

21 13. Throughout the class period defined *infra*, Wal-Mart administered and
22 employed a corporate policy, practice, and/or custom concerning the underpayment of
23 overtime compensation, the corresponding untimely payment of final wages, the
24 untimely payment of accrued vacation pay to terminated and quitting employees, and the
25 failure to accurately record and report wages earned and hours worked on employee pay
26 stubs.

27 14. The systematic illegal employment practices set forth above constitute
28 violations of the California Labor Code and the FLSA, and they have resulted in the

1 unjust enrichment of Wal-Mart. Accordingly, these actions are unlawful and unfair, and
2 they constitute violations of section 17200 *et seq.* of the California Business and
3 Professions Code.

4 CLASS-ACTION ALLEGATIONS

5 15. The Class represented by Plaintiff consists of all natural persons who
6 were tendered a check for services performed for Wal-Mart in California during the
7 period beginning four years prior to the filing of this case through the date of the filing
8 of a motion for class certification. At the time of filing a motion for class certification,
9 the Class may be redefined to include subclasses.

10 16. Numerosity. The number of Class Members is great, believed to be in
11 excess of ten-thousand persons. It therefore is impractical to join each Class Member as
12 a named plaintiff. Accordingly, utilization of a class action is the most economically
13 feasible means of determining the merits of this litigation.

14 17. Ascertainability. Despite the size of the proposed Class, Class Members are
15 readily ascertainable through an examination of the records that Wal-Mart is required by
16 law to keep. Likewise, the dollar amount owed to each Class Member is readily
17 ascertainable by an examination of those same records.

18 18. Commonality. Common questions of fact and of law predominate with
19 respect to Class Members' claims over individual issues regarding the money owed to
20 each Class Member. The questions include, but are not limited to, the following:

21 a. Whether Wal-Mart miscalculated employees' overtime compensation
22 on account of failing to include the meal-premium wage in the regular rate of pay.

23 b. Whether Wal-Mart failed to pay former employees all wages due at the
24 time of termination on account of the miscalculation of the regular rate of pay.

25 c. Whether Wal-Mart failed to pay former employees all accrued vacation
26 pay upon termination.

27 d. Whether Wal-Mart failed to provide accurate itemized wage
28 statements to its employees.

1 3 Whether Wal-Mart's conduct constitutes unlawful, unfair, or
2 fraudulent business practices.

3 f Whether Wal-Mart's conduct constitutes unfair competition;

4 g Whether Class Members are entitled to injunctive relief prohibiting
5 Wal-Mart from not providing employees with all wages earned and unpaid promptly
6 upon termination or resignation.

7 h Whether Class Members are entitled to damages and equitable
8 relief for Wal-Mart's not providing employees with accurate itemized wage
9 statements.

10 19. Community of Interest. There is a well-defined community of interest in the
11 questions of law and fact common to the Class Members.

12 20. Typicality. Plaintiff's claims are typical of the claims of the Class
13 Members, which claims all arise from the same general operative facts, namely,
14 Defendant did not compensate its employees as required by the FLSA's overtime
15 provisions, did not pay in a timely manner those employees who either quit or were
16 discharged all wages due and owing, and did not furnish to its employees all of the
17 information required by section 226 of the California Labor Code.

18 21. Superiority. A class action is a superior method for the fair and efficient
19 adjudication of this controversy. The persons within the Class are so numerous that
20 joinder of all of them is impracticable. The disposition of all claims of Members of the
21 Class in a class action, rather than in individual actions, benefits the parties and the
22 Court. The interest of the Class Members in controlling the prosecution of separate
23 claims against Wal-Mart is small when compared with the efficiency of a class action.

24 22. Adequacy of Representation. The Representative Plaintiff in this class
25 action is an adequate representative of the Class in that the Representative Plaintiff's
26 claims are typical of those of the Class and the Representative Plaintiff has the same
27 interest in the litigation of this case as the Class Members do. The Representative
28 Plaintiff is committed to the vigorous prosecution of this case, and he has retained

1 competent counsel experienced in litigation of this nature and with sufficient financial
2 resources to undertake the matter. The Representative Plaintiff is not subject to any
3 individual defenses unique from those conceivably applicable to the Class as a whole.

4 23. Manageability. Although this Class consists of thousands of employees and
5 former employees, the matter is manageable as a class action, the data required to
6 establish liability and prove damages is readily available in computerized databases.

7 FLSA COLLECTIVE-ACTION ALLEGATIONS

8 24. In this collective action, Plaintiff seeks to represent all non-exempt
9 employees of Wal-Mart who have not received all of the overtime wages due them on
10 account of the miscalculation of their regular rate of pay.

11 25. Plaintiff is similarly situated with the Collective-Action Members in that (a)
12 Plaintiff and the Collective-Action Members were employed by Wal-Mart, (b) Plaintiff
13 and the Collective-Action Members were not paid all of their overtime wages, and (c)
14 Wal-Mart systematic failure to pay the Collective-Action Members constitutes a
15 knowing and willful violation of the FLSA.

16 26. This action is maintainable as an "opt-in" collective action pursuant to 29
17 U.S.C. § 216(b) as to claims for unpaid overtime, liquidated damages, costs, and
18 attorney's fees.

19 27. All individuals employed by Wal-Mart who did not receive all of the
20 overtime wages due them on account of the miscalculation of their regular rate of pay
21 should be allowed to give their consent in writing—i.e., to "opt in"—to the collective
22 action pursuant to 29 U.S.C. § 216(b). A true and correct copy of Plaintiff's FLSA
23 Consent Form is attached hereto as Exhibit 2.

24 FIRST CLAIM FOR RELIEF

25 (29 U.S.C. § 216)

26 28. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every
27 allegation set forth in the Complaint.

28 29. Again, Wal-Mart has calculated its employees' overtime rate of pay without

1 including the extra compensation they receive on account of missed meal periods. In
2 other words, Plaintiff, as well as all other non-exempt Wal-Mart employees who earned
3 overtime wages and meal-premium wages during the same pay period, have not received
4 all wages due and owing.

5 30. Accordingly, Plaintiff and Collective-Action Members are entitled to be
6 paid according to proof the damages specified by 29 U.S.C. § 216. In addition, Plaintiff
7 is entitled to attorney's fees and costs pursuant to 29 U.S.C. § 216.

8 **SECOND CLAIM FOR RELIEF**

9 (Cal. Lab. Code § 203)

10 31. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every
11 allegation set forth in the Complaint.

12 32. Wal-Mart has routinely failed to timely pay Plaintiff and other former
13 employees all wages due them on termination of employment. Wal-Mart has violated the
14 California Labor Code provisions concerning the timely payment of wages upon
15 termination, namely, sections 201 and 202.

16 33. Section 203 of the California Labor Code provides:

17 If an employer willfully fails to pay, without abatement or reduction, in
18 accordance with Sections 201, 201.5, 202 and 202.5, any wages of an
19 employee who is discharged or quits, the wages of the employee shall
20 continue as a penalty from the due date thereof at the same rate until paid or
21 until action therefor is commenced, but the wages shall not continue for
22 more than 30 days.

23 Cal. Lab. Code § 203. Wal-Mart's failure to timely pay terminated employees all wages
24 due and owing, despite its knowledge of its obligation to do so, is "willful" within the
25 meaning of section 203. Accordingly, Plaintiff and Class Members are entitled to up to
26 thirty days of continuing wages.

27 34. Additionally, Plaintiff is entitled to costs and attorney's fees, demand for
28 which is hereby made in accord with the provisions of the California Labor Code.

THIRD CLAIM FOR RELIEF

(Cal. Lab. Code § 226)

35. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in the Complaint.

36. Wal-Mart employed Plaintiff and Class Members but failed to provide them with the data required by section 226 of the California Labor Code.

37. Accordingly, Plaintiff and each Class Member is entitled to damages, and Plaintiff is entitled to costs and attorney's fees, demand for which is hereby made in accord with the provisions of section 226(e) of the California Labor Code.

FOURTH CLAIM FOR RELIEF

(Cal. Bus. & Prof. Code § 17200 et seq.)

38. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in the Complaint.

39. Plaintiff is suing both in his individual capacity and on behalf of the general public, and he is a proper representative Plaintiff because he has suffered direct harm from the illegal business practices herein alleged.

40. Wal-Mart has committed acts of unfair business practice as defined in California Business and Professions Code section 17200 *et seq.* by systematically excluding meal-premium wages when calculating its employees' regular rates of pay. By doing so, Wal-Mart underpays overtime compensation to its employees, in violation of the FLSA, and necessarily fails to pay certain terminated employees all wages due and owing, in violation of the California Labor Code.

41. Under section 17200 *et seq.*, this Court is authorized to enter such judgment or order as may be necessary to restore to any person in interest the money or property acquired by Wal-Mart through its unlawful and unfair business practices.

42. Plaintiff and Members of the class are therefore entitled to a judgment of this Court requiring Defendant to pay to Plaintiff and each identifiable Class Member the unpaid overtime wages to which such individuals were and are entitled but which have

1 been denied them by reason of Wal-Mart's conduct alleged herein. In other words,
2 Plaintiff and the other employees are entitled to restitution of their unpaid overtime
3 wages improperly withheld by Wal-Mart, as such funds should be distributed to the
4 individuals who are rightfully entitled to such monies.

5 43. The named Plaintiff is a proper person to bring this litigation as a
6 "representative action" to compel restitution. The named Plaintiff is a person who has
7 suffered damage as a result of the unlawful actions of Wal-Mart herein alleged. The
8 actions of Wal-Mart herein alleged are in violation of the FLSA and California Labor
9 Code, and, accordingly, a court order compelling it to cease and desist from such actions
10 and to make restitution is a vindication of an important public right. The extent to which
11 Wal-Mart has been unjustly enriched as a result of its unlawful and unfair business
12 practices is a matter that can be ascertained by an examination of the payroll and
13 accounting records that Wal-Mart is required by law to keep and maintain and that Wal-
14 Mart has kept and maintained.

15 44. The identity of the persons to whom restitution should be made is a matter
16 that can be ascertained from those records that Wal-Mart is required by law to keep and
17 maintain and that it has kept and maintained.

18 45. Plaintiff's efforts in securing the requested relief will result "in the
19 enforcement of an important right affecting the public interest," as "a significant benefit,
20 whether pecuniary or nonpecuniary, [will] be[] conferred on . . . a large class of persons."
21 Cal. Civ. Proc. Code § 1021.5. Moreover, because "the necessity and financial burden of
22 private enforcement . . . are such as to make [an attorney's fee] award appropriate, and
23 [because attorney's] fees should not in the interest of justice be paid out of the recovery,
24 if any," *id.*, Plaintiff requests that the Court also award reasonable attorney's fees
25 pursuant to the provisions of section 1021.5 of the California Code of Civil Procedure.

26 46. Plaintiff and the Class Members have no plain, speedy, or adequate remedy
27 at law, inasmuch as Wal-Mart, unless enjoined by an order of this Court, will continue to
28 violate systematically the provisions of the FLSA and California Labor Code.

1 47. Accordingly, injunctive relief is proper and necessary pursuant to section
2 17203 of the California Business and Professions Code.

3 48. Pursuant to section 17205, the remedies and penalties provided by section
4 17200 *et seq.* are cumulative to the remedies and penalties available under all other laws
5 of this state.

6 **WHEREFORE**, Plaintiff prays judgment as follows:

7 1. That the Court certify the class action described in this Complaint.

8 2. That the Court certify the collective action described in this Complaint.

9 3. With respect to the First Claim for Relief, that the Court enter judgment in
10 favor of Plaintiff and Collective-Action Members in the amount of damages, liquidated
11 damages, attorney's fees, and costs, each according to proof.

12 4. With respect to the Second Claim for Relief, that the Court award Plaintiff
13 and the Class members damages according to proof, attorney's fees, and costs, each
14 according to proof.

15 5. With respect to the Third Claim for Relief, that the Court enter judgment in
16 favor of Plaintiff and Class Members damages according to proof, attorney's fees, and
17 costs, each according to proof.

18 6. Also with respect to the Third Claim for Relief, that the Court grant Plaintiff
19 an injunction in order to prevent Defendant from continuing to violate section 226 of the
20 California Labor Code.

21 7. With respect to the Fourth Claim for Relief, that the Court enter judgment in
22 favor of Plaintiff and Class Members for restitution, attorney's fees, and costs, each
23 according to proof.

24 8. Also with respect to the Fourth Claim for Relief, that the Court grant
25 Plaintiff an injunction in order to prevent Defendant from continuing to violate the FLSA
26 with respect to the miscalculation of overtime compensation.

27 9. For such further relief as the Court may order.

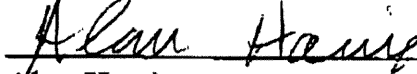
28 /////

SEP-05-2008 13:07 FROM: HARRIS AND RUBLE 3239313366 TO: 14159340200
Case 4:08-cv-04214-SBA Document 1 Filed 09/05/08 Page 13 of 16

P.14

1 DATED: September 5, 2008

HARRIS & RUBLE



Alan Harris

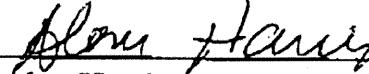
Attorney for Plaintiff

2
3
4
5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal
7 Rules of Civil Procedure.
8

9 DATED: September 5, 2008

HARRIS & RUBLE



Alan Harris

Attorneys for Plaintiff

SEP-05-2008 13:07 FROM: HARRIS AND RUBIN 3239313366 Filed 09/05/08 Page 14 of 16

P.15

WALMART
D.S.A. 04-01
DOWNTOWN, AR 72118

105029

BENNETT D RUBIN 01WS XXXXXX1125

DESCRIPTION	RATE	HOURS	EARNINGS	YEAR TO DATE	FEDERAL TAX	SOCIAL SECURITY	SDI TAX	CALIFORNIA	CO STK CONT	STOCK PURCH
REGULAR EARNING	96500	7083	48351	1323172	3985	5476	565	676	4947	2000
OVERTIME EARN	147912	32	473	48000						
CA MEAL PREM	96500	100	965	96500						
OVERTIME/INCT			00	697						
MYHARE INCT			00	20000						
VAC PAY			00	36695						
HOLIDAY PAY			00	30240						
CO STK CONT			300	3500						
PERSONAL TIME			00	1930						
SUNDAY PREMIUM	10000	1500	1500	23694						
VAC HRS AVAIL				8970						
SICK HRS AVAIL				4599						

ARE YOU IN THE RIGHT MEDICAL PLAN? OPEN ENROLLMENT: 9/16-10/27

71589 10702 2300 58587 08-19-2006 062393008 58587

1490793 238215 41600 1211178 09-01-2006

DEDUCTIONS NET PAY

STATE OF EARNINGS AND DEDUCTIONS - DETACH AND RETAIN FOR YOUR RECORDS

WALMART
D.S.A. 04-01
DOWNTOWN, AR 72118

8089263

BENNETT D RUBIN 01WS XXXXXX1125

DESCRIPTION	RATE	HOURS	EARNINGS	YEAR TO DATE	FEDERAL TAX	SOCIAL SECURITY	SDI TAX	CALIFORNIA	CO STK CONT	STOCK PURCH	DRAW OR ALLOW
REGULAR EARNING	96500	3169	30581	1430596	18241	13118	253	3568	390	2000	109664
OVERTIME EARN			00	48188							
CA MEAL PREM			00	965							
OVERTIME/INCT			00	697							
PERS P/OUNUSED	96500	5518	53249	53249							
VAC P/O UNUSED	96500	8970	86560	86560							
MYHARE INCT			00	20000							
VAC PAY			00	36695							
HOLIDAY PAY			00	37960							
CO STK CONT			300	3900							
PERSONAL TIME			00	1930							
SUNDAY PREMIUM	10000	795	795	24489							
SICK HRS AVAIL				4875							

ASSOCIATE DISCOUNT - CHILDREN'S TUTORING - WALMART BENEFITS.COM

171485 35180 111966 24341 09-16-2006 063776277 24341

1747329 286974 155664 1304691 09-29-2006

DEDUCTIONS NET PAY

STATE OF EARNINGS AND DEDUCTIONS - DETACH AND RETAIN FOR YOUR RECORDS

SEP-05-2008 13:07 FROM: HARRIS AND RUBLE 3239313366 Filed 09/05/08 Page 15 of 16

P.16

X113236

BENNETT D RUBIN				01WS		FEDERAL TAX		5778		64530	
DESCRIPTION	RATE	HOURS	EARNINGS	YEAR TO DATE	YEAR TO DATE	SOCIAL SECURITY	SDI TAX	707	8004	1031	11167
REGULAR EARNING	96500	8000	77200	77200	874042	26066	697	300	1500	2000	10000
OVERTIME EARN	147467	106	1563	1563	26066	697	300	1500	2000	10000	10000
OVERTIME/INCT			00	00	20000	697	300	1500	2000	10000	10000
MY#HARE INCT			00	00	20000	697	300	1500	2000	10000	10000
VAC PAY			00	00	20000	697	300	1500	2000	10000	10000
HOLIDAY PAY	96500	800	77200	77200	22520	697	300	1500	2000	10000	10000
CO STK CONT			300	300	1500	697	300	1500	2000	10000	10000
SUNDAY PREMIUM	10000	1613	1613	1613	16874	697	300	1500	2000	10000	10000
VAC HRS AVAIL		8970				697	300	1500	2000	10000	10000
SICK HRS AVAIL		3466				697	300	1500	2000	10000	10000

ASSOCIATE CRUISES FROM 9259 RESTRICTIONS APPLY 808-733-0081

88386	14279	2300	71817	05-27-2006	05828468	71817
1000494	160239	27600	812655	06-29-2006		

STATEMENT OF EARNINGS - 11 DEDUCTIONS - DETACH AND RETAIN FOR YOUR RECORDS

SEQ:H064374

BENNETT D RUBIN				01WS		FEDERAL TAX		4957		58752	
DESCRIPTION	RATE	HOURS	EARNINGS	YEAR TO DATE	YEAR TO DATE	SOCIAL SECURITY	SDI TAX	643	7297	870	10136
REGULAR EARNING	96500	8000	77200	77200	796842	24503	697	300	1200	2000	8000
OVERTIME EARN	147719	84	1240	1240	24503	697	300	1200	2000	8000	8000
OVERTIME/INCT			00	00	20000	697	300	1200	2000	8000	8000
MY#HARE INCT			00	00	20000	697	300	1200	2000	8000	8000
VAC PAY			00	00	20000	697	300	1200	2000	8000	8000
HOLIDAY PAY			00	00	20000	697	300	1200	2000	8000	8000
CO STK CONT			300	300	1200	697	300	1200	2000	8000	8000
SUNDAY PREMIUM	10000	1600	1600	1600	15261	697	300	1200	2000	8000	8000
VAC HRS AVAIL		8970				697	300	1200	2000	8000	8000
SICK HRS AVAIL		3262				697	300	1200	2000	8000	8000

WM AWARD FOR ETHICAL COURAGE NOMINATION FORM ON THE WIRE (59)

CURRENT	80340	12616	2300	65426	05-13-2006	057510504	65426
YEAR TO DATE	912098	145960	25300	740838	05-26-2006		
EARNINGS		TAXES	DEDUCTIONS	NET PAY			

STATEMENT OF EARNINGS AND DEDUCTIONS - DETACH AND RETAIN FOR YOUR RECORDS

SEP-05-2008 13:07 FROM: HARRIS AND RUBLE 3239313366 TO: 14159340000
Case 4:08-cv-04214-SBA Document 1 Filed 09/05/08 Page 16 of 16 P.17

FLSA CONSENT FORM

Pursuant to the provisions of 29 U.S.C. § 216(b), the Fair Labor Standards Act, I hereby consent to be a party plaintiff to this action.

9/2/08
Date

BENNETT RUBIN
Print Name

X Bennett Rubin
Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles; I am over the age of eighteen years and not a party to the within entitled action; my business address is 333 South Hope Street, 48th Floor, Los Angeles, California 90071-1448.

On **October 19, 2009**, I served the following document(s) described below as:

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR
PARTIAL SUMMARY JUDGMENT**

on the interested parties as follows:

Marc Primo
Matthew T. Theriault
Dina Livhits
Initiative Legal Group LLP
1800 Century Park East, 2nd Floor
Los Angeles, CA 90067
telephone: 310-556-5637
facsimile: 310-861-9051

- ☒ **BY CM/ECF SYSTEM:** I caused the above-referenced document(s) to be sent by electronic transmission to the Clerk's Office using the CM/ECF System for filing which generated a Notice of Electronic Filing to the CM/ECF registrants in this case.
- ☒ **FEDERAL:** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **October 19, 2009**, at Los Angeles, California.

/s/ Lynda G. Johnson
Lynda G. Johnson